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POLICY REPORT



Workers'
Compensation
Board

Commission
des accidents
du travail

December 1988
Vol. 1 No. 6

Incentive System Launched

An incentive system designed to reward Schedule 1 employers with exemplary occupational health and safety programs and accident cost experience is scheduled for implementation in early 1989. This new initiative, under section 91(6), will parallel the section 91(4) pilot project (*Policy Report*, Vol. 1 No. 4, "Target: Improving Health and Safety").

While the 91(4) program enables the Board to levy additional assessments on employers who have taken insufficient precautions to prevent accidents in the workplace, and whose workplace

conditions are unsafe, the new 91(6) program will recognize those employers who conscientiously adhere to high occupational health and safety standards.

Successful candidates will be eligible for one of 3 types of awards:

- 5 awards with assessment rebates of 75%, to a maximum of \$100,000
- 50 awards with assessment rebates of 45%, to a maximum of \$50,000
- 100 awards with assessment rebates of 10%, to a maximum of \$25,000

In addition, successful firms will receive certificates of excellence in occupational health and safety performance, and permission to use the program logo in their advertising and promotional material for the 12 month period following the award.

Those firms qualifying for rebates under both the new program and one of the experience rating programs will receive the larger of the 2 rebates.

Details of the program will be communicated to all Schedule 1 employers in January, 1989.

French Services

Mise à jour – Services en français

À compter du 31 décembre 1988, les Services de traduction française de la CAT seront décentralisés et transférés aux Bureaux régionaux d'Ottawa et de Sudbury, où le volume de traduction est le plus élevé.

Pour de plus amples renseignements, veuillez contacter M^{me} Cheryl Tucker, coordonnatrice des Services en français, au (416) 927-5022.

French Services Update

Effective December 31, 1988, the WCB's French Translation Services are being decentralized to the Ottawa and Sudbury Regional Offices; the areas of most demand.

For further information, please contact Cheryl Tucker, Co-ordinator, French Services, at (416) 927-5022.

WCB Library Services Now Available

Co-ordinator of the WCB Reference Library, Marcia Douglas, wants to see more of the public. Here's your incentive; she has a room filled with virtually everything anyone could want to know about workers compensation, and it's open to the general public from 8:30 a.m. to 5:00 p.m., Monday through Friday.

Those who have never seen the library on the 22nd floor of 2 Bloor St. E., may not realize all it has to offer. It's filled with thousands of books, journals, videos, films and audio tapes. It has about 100 running periodical subscriptions, extensive medical and law sections, manuals and other material from workers' compensation boards all over North America. All of this is available for use by the public.

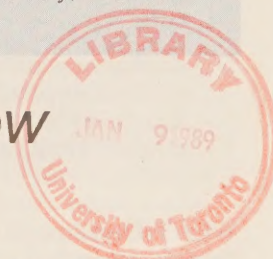
As it has only been in operation since August of this year, there hasn't been time to catalogue

everything, but Marcia, and library technician Yasmin Farouk, are available to assist in finding material. Plans are underway to put all titles on-line so anyone at the Board with IBM mainframe access will be able to view the catalogue.

A new feature about to be introduced for Board employees is a routing service for periodicals. The library will print the table of contents of specific journals, and distribute them to interested parties. The lists will be divided by area of interest (legal, medical, etc.). This way individuals will know when there is an article in print of particular interest to them.

The library is also the Boards' designated reading room, in accordance with the Freedom of Information Act.

(Continued on page 4)



“Chance Event” and “Disablement” Defined by Board

The controversial interpretation of “injury by accident” contained in WCAT* Decision 72 has been the subject of much interest and debate over the past months.

Following consideration of WCAT’s interpretation, and after holding public hearings, the WCB Board of Directors, pursuant to section 86n, released its determination regarding the interpretation of section 1 (1)(a) of the Act.

Section 1(1)(a)

“...‘accident’ includes,

- (i) a wilful and intentional act, not being the act of the worker,
- (ii) a chance event occasioned by a physical or natural cause, and
- (iii) disablement arising out of and in the course of employment; R.S.O. 1980, c. 539, s. 1(1), cl. (a); 1982, c. 61, s. 2.”

WCAT Decision 72 stated that “chance event”

- can be an external chance event, which causes an injury,
- OR
- can be an unexpected injury itself.

Therefore, no external or precipitating event need take place for there to be a compensable accident.

However, the WCB Board of Directors determined that a “chance event” must be an identifiable occurrence which causes the injury. An unexpected injury alone is not considered to be a “chance event”.

WCAT, in Decision 72, also limited the definition of “disablement” to those injuries which develop over a long period of time.

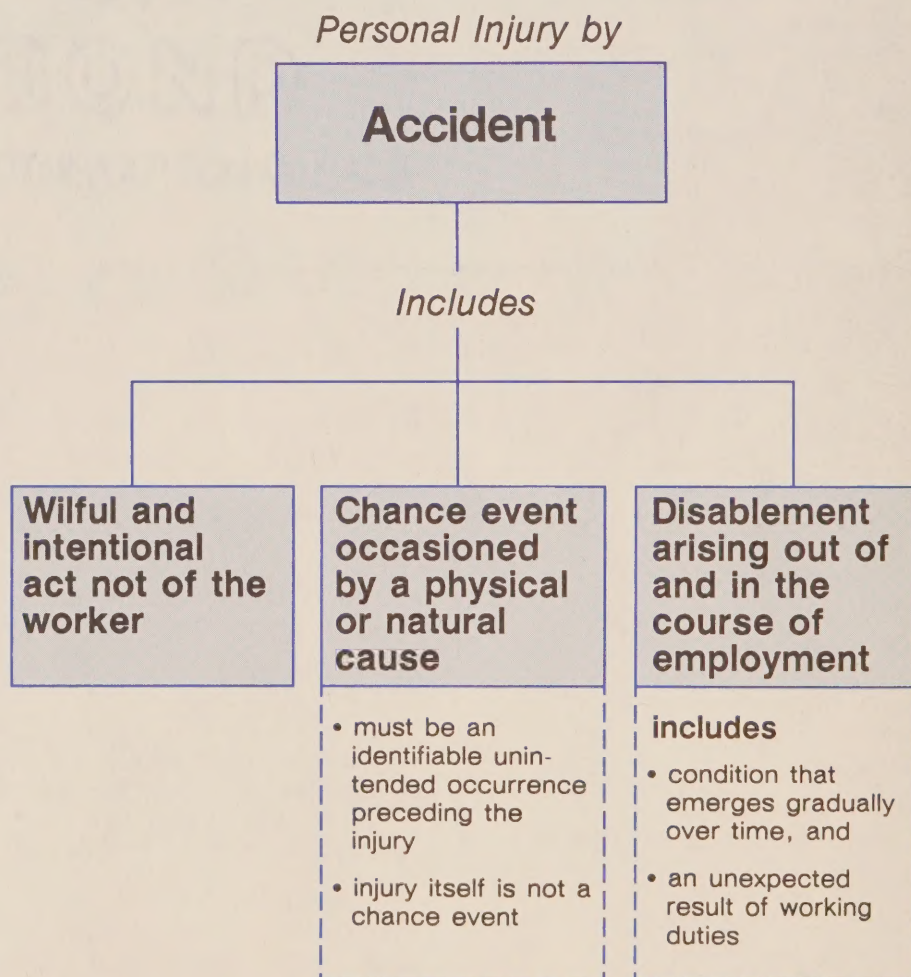
But the WCB Board of Directors stated that injuries which develop

over a long period of time, and injuries which are an unexpected result of working duties, fall within the meaning of “disablement arising out of and in the course of employment”.

An interpretation bulletin, explaining the Board of Directors’ decision in greater detail, and giving some examples of the application of these interpretations, has been mailed to all 1,500 external WCB manual subscribers. Copies can be obtained by calling Policy Publications at (416) 927-4941.

The Board of Directors has also directed the administrators of the Board to conduct an immediate policy review of the evidentiary burden on workers and employers. The administrators’ review will involve an appropriate consultative process, following which the Board will develop a policy to guide adjudicators and will present it to the Board of Directors for approval.

*** WCAT – Workers’ Compensation Appeals Tribunal.**



**Chart summarizing the
Board of Directors’ definition of “accident”**

Experience Rating and Demerit Systems

The Workers' Compensation Board accident fund is comprised of revenue obtained from 2 sources: annual employer assessment premiums, and income derived through investment of these premiums. Operating on principles of no-fault insurance, the accident fund guarantees that adequate resources are available for payment of benefits to injured workers and administration expenses.

All employers in a rate group pay the same rate of assessment, which is calculated on the basis of past accident cost experience for the rate group, current cost records, projected accident costs, and the rate group's share of WCB administration expenses.

However, the Act allows the Board to adjust individual employer's assessment rates on the basis of accident frequency and cost through the Experience Rating and Demerit Systems.

"A system of merit rating may, if considered proper, be adopted."
(Workers' Compensation Act, section 105(3))

Experience Rating

Experience rating plans have 2 main objectives:

- to reward employers with good safety records, and provide financial incentives for promoting occupational health and safety, and
- to provide a measure of individual employer accountability through a system of refunds and surcharges based on the employer's individual accident record.

While employers participating in experience rating programs remain in the same rate group, they may receive a refund or surcharge based on a comparison between their individual accident record and the average within the rate group.

Currently, the WCB administers 3 experience rating programs. All of which share similar goals and objectives. However, the focus of each plan differs according to the needs of the rate groups involved.

1. Voluntary Experience Rating Plan *

In 1953, a Voluntary Experience Rating Plan was introduced. Referred to as "voluntary", this plan goes into effect only if results of polling eligible firms indicate that supporters are in the majority. The plan currently applies to 36 of the 109 rate group classifications.

Under this plan, assessment rates for each participating firm are adjusted based on a comparison between the **firm's average cost rate** (total accident costs divided by total payroll, multiplied by 100) and the **costs of the rate group as a whole**.

Restrictions within the Voluntary Experience Rating Plan ensure that a significant measure of collective liability is maintained.

2. New Experimental Experience Rating Plan (NEER) *

Approved for implementation in 1984, the NEER plan applies to 18 rate groups. Under this plan, a firm's assessment rate is adjusted on the basis of accident costs only.

Firms with low accident costs receive refunds on their assessment premiums, while surcharges are levied against firms with excessive accident costs.

The type and amount of premium adjustment is determined by comparing the **amount of assessment paid** by the firm, with the firm's **actual accident costs** (the cost of each compensation claim, estimates of future expenditures, and administrative costs). Also taken into consideration is the size of the company.

3. Construction Industry Plan (CAD-7) (Council Amendment to Draft #7) *

Jointly developed by the WCB and representatives of the construction industry, this plan was approved by the Board in 1984. CAD-7 currently applies to 11 rate groups in the construction industry.

The basis for application of a credit or surcharge is the difference between a firm's **actual accident costs and frequency** and the **expected accident costs and frequency**. The size of the firm is also taken into consideration.

Demerit System *

Whereas experience rating programs can either reduce or increase employers' assessments, the demerit system increases a firm's premium through application of penalties.

As elevated accident frequency rates result in high accident costs, the demerit system under section 91(7) authorizes the WCB to impose penalties, or levy surcharges in excess of a firm's usual assessment rate when their accident experience exceeds the rate group average.

"Where the work injury frequency and the accident cost of the employer are consistently higher than that of the average in the industry in which he is engaged, the board, as provided by the regulations, may increase the assessment for that employer by such a percentage thereof as the board considers just, and may assess and levy the same upon the employer, and may require the employer to establish one or more safety committees at plant level."

(Workers' Compensation Act, section 91(7))

Theoretically, the demerit system could apply to any Schedule 1 firm with an accident cost experience significantly worse than the rate group average.

(Continued on page 4)

Experience Rating and Demerit Systems (continued)

Under section 91(7) the minimum penalty is 100% of the assessment rate. This penalty is levied when a firm has:

- a deficit cost experience for 2 of the last 3 complete years of operation, and
- a lifetime deficit accident cost experience, and
- a compensable accident frequency rate at least 25% higher than for the industry for 2 of the last 3 years of operation.

Procedural Change

The concurrent administration of the 3 experience rating programs in addition to the 91(7) program makes it possible for a firm to receive a penalty/surcharge from one program and a rebate/credit from another. Where a penalty is payable under more than one program, only the higher penalty is levied.

In an attempt to alleviate the confusion between these programs, the WCB Board of Directors adopted a resolution, effective November 4, 1988, to "limit the application of section 91(7) to exclude firms in NEER or CAD-7 experience rating programs."

* For more information please refer to the WCB Employer Assessment Policies Manual.

Attention Subscribers to Policy Report

To ensure you receive each issue, and to keep our mailing costs down, we need to keep our distribution system up-to-date. Please submit changes to your mailing address to:

Usha Kapoor, Manuals Distribution Specialist,
Policy Publications – Training and Information Branch
Workers' Compensation Board, 22nd Floor
2 Bloor Street East
Toronto, Ontario, M4W 3C3
(416) 927-4941

Subscriptions to *Policy Report* are free on request to this address.

Policy Report - 1988 Review

Despite a late start, the staff of Policy Publications produced six issues of *Policy Report* by year end.

Over the year our public audience grew from 1,201 subscribers to 2,295, an increase of 91%. Our external readers include worker and employer advocacy groups, union representatives, lawyers, doctors, university and public libraries, private employers, MPP's, and other workers' compensation systems, just to name a few. We even have a subscriber in Australia!

Internally, the audience for *Policy Report* includes virtually all staff at Head Office, the Downsview

Rehabilitation Centre, and the regional offices throughout the province. Copies are available in the reception areas of all regional offices.

The Policy Report team, Janet Tighe and David Williams (writers), Usha Kapoor (distribution co-ordinator) and Jean d'Agenais (editor) would like to take this opportunity to thank all those who have called or written to express their interest in *Policy Report*.

To all our readers –

a happy, healthy, and prosperous New Year!

WCB Library Services Now Available (Continued from page 1)

The library has on-line access to many data bases, including the Canadian Centre of Occupational Health and Safety (CCOHS), and material safety data sheets filed with CCOHS. Also, copies of everything published by the Workers' Compensation Appeals Tribunal (WCAT), such as abstracts of decisions, are available.

For those interested in viewing historical documents, there are Annual Reports, rate books, and Acts dating back to 1914.

For more information about the WCB Reference Library, please refer to the pamphlets enclosed with this issue of *Policy Report*.

POLICY REPORT

Policy Report is published by the Policy and Program Development Department of the Workers' Compensation Board. Where opinions are expressed they are those of the Department and do not represent the official position of the WCB.

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